BANK OF THE STATE *vs.* BYRD.

A verdict in favor of the interpleader, in an action by attachment, for one of three slaves claimed in the interplea, without a finding for either party as to the other two, is a nullity upon which no valid judgment can be rendered.

After such verdict, the interpleader has no right to file a second interplea, as his rights may well be adjudicated under the first.

Nor can his name be stricken from the docket after such verdict and judgment thereon in his favor, without his consent.

Writ of Error to the Pulaski Circuit Court.

Richard C. Byrd brought an action of assumpsit, by attachment, against Johnson & Lewis, in the Pulaski Circuit Court. The attachment was levied on three slaves, Isaac, his wife Tena, and Abram, as the property of Johnson.

At the return term, September, 1842, the Bank of the State ofArkansas filed an interplea, under the statute, alleging that said slaves belonged to her, and were not subject to the attachment. At the May

term 1843, Parrott & Strong filed an interplea claiming the slaves. Byrd took judgment against Johnson & Lewis by their consent, and filed replications to the interpleas of the Bank and Parrott & Strong, to which they took issue. At the November term 1843, the issues were submitted to a jury, and the following verdict was returned by them: "We the jury do find the within negro boy Abram to be the property of the Bank of the State of Arkansas, and award him to said Bank; and the jury are unable to agree as to Isaac and Tena, within named, and pray to be discharged as to them." The court received the verdict, discharged the jury, and rendered judgment in favor of the Bank for the slave Abram. The case was continued without any action of consequence until the October term 1846, when Byrd filed a motion to strike from the docket the names of the Bank and Parrott & Strong as interpleading parties, upon the ground that their claims to the slaves attached had been submitted to a jury, and they had received, and acquiesced in the verdict. Whereupon Parrott & Strong withdrew their interplea and were dismissed from the case; and the court sustained the motion to strike the name of the Bank from the docket as a party interpleading, to which the Bank excepted. The Bank then moved for leave to file another interplea claiming the slaves Isaac and Tena, which the court refused, and the Bank excepted, setting out the plea which she offered to file in her bill of exceptions.

The Bank brought error.

LINCOLN, for the plaintiff. The judgment rendered in this case in favor of Byrd v. Johnson and Lewis is erroneous. It is a judgment by confession, and the affidavit required by law was not filed, and it is consequently void so far as the rights of this interpleader are concerned. *Rev. Stat. page* 638, *sec.* 138.

The law of the land guarantees to every individual a fair trial as to the right of property, and the court erred in striking from the docket the name of the State Bank before she had a new trial as to the property claimed by her in this case. The verdict of the jury expressly states that they did not find as to two of the negroes, and consequently no judgment could be rendered. *Rev. Stat. p.* 121, *&c., sec.* 38, 39.

In a finding for five slaves, if the jury find for the plaintiff as to four of them, without also finding for the plaintiff or defendant as to the fifth, the verdict will be set aside and *venire facias de novo* awarded. *Butler* v. *Parks,* 1 *Wash. Rep.* 99.

RINGO & TRAPNALL, contra.

JOHNSON C. J. The State Bank of Arkansas came in and filed her interplea, by which she claimed all the negroes upon whom the attachment was levied, being three in number. The plaintiff, Byrd, replied to the plea and issue was taken upon it. The jury who were sworn to try the issue between the parties reported that the boy, Abram, *alias* Abraham, was the property of the Bank of the State of Arkansas, but that they were unable to agree as to Isaac and Tena, and asked to be discharged as to them. The court then ordered them to be discharged without any finding as to Isaac and Tena, the other two negroes in controversy. The State Bank in her interplea claimed each and all of the negroes attached, and the title to all was involved in a single issue. The investigation of the jury was not confined to one only, but they were bound, under the issue, to make a final disposition of the whole. True it is, that they were not required to find that all belonged to the same party, yet the verdict, to support a judgment, should have found either in whole or in part for the one, or the other. They were legally bound to dispose of the whole issue, and in so doing, they must necessarily have assigned the entire property to the one, or partly to the one and partly to the other. The verdict therefore is a mere nullity, and as such cannot support the judgment rendered upon it. The court erred in receiving the verdict in the shape presented, but should have rejected it and ordered a *venire de novo.* After the jury returned the verdict, and the court pronounced judgment upon it, the plaintiff, Byrd, filed a motion to strike the name of the Bank from the docket; which motion was sustained by the court. The Bank, by filing her interplea, made herself a party to the suit, and whether she was successful or not upon the trial of the right of property, she could not be driven out of court without her consent. If she was dissatisfied with the judgment of the court,

after she became a party to the proceeding, she had a clear and unquestionable right to prosecute her appeal or writ of error into this court to have it reversed. It would be difficult to conceive upon what ground the Circuit Court sustained the motion to strike her name from the docket. There can be no doubt of the right of the Bank to interplead and set up her claims to the property seized by virtue of the attachment; and if so, it follows as a necessary consequence, that the moment her plea was raised, she became invested with all the rights of a party to the proceeding, and consequently could not be forced to yield her ground. The court most clearly erred in striking her name from the docket. The court ruled correctly in refusing permission to the Bank to file her second interplea, as she had enjoyed all the benefits of that plea upon the trial of the first. She did not claim other or different property from that specified in her first plea. She certainly could not expect to be permitted to come in with a second plea claiming the same or a part of the identical property claimed in the first, and to bring the same matter before another jury, and that, upon a different plea. She was entitled, upon her first plea, in which she set up her claim to all the negroes, to a direct and unequivocal response, and in case that should not be satisfactory, her remedy was full and ample by an appeal or writ of error to this court. We are clearly of opinion that the judgment of the Circuit Court is erroneous and ought to be reversed. Judgment reversed.